

JAMES E. KORDOSKY AND ROBERT A. WEISS

IBLA 79-242

Decided September 18, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 56773-E.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. A lease may be reinstated if the failure to pay the rental timely was either justifiable or not due to a lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

In order for the failure to pay oil and gas lease rental timely to be considered justifiable, it must be caused by factors outside the lessee's control, which were the proximate cause of the failure.

Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection transmittal and delivery of the payment.

When rental payment for an oil and gas lease is mailed after the date it is due, there can be no basis for reinstating the lease because of reasonable diligence.

## 3. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

When appellant's failure to mail his rental payment timely is caused by carelessness or inadvertence, his petition for reinstatement of an oil and gas lease is properly denied.

APPEARANCES: James E. Kordosky, for appellants.

## OPINION BY ADMINISTRATIVE JUDGE THOMPSON

James E. Kordosky appeals from the January 29, 1979, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 56773-E. Appellant's lease terminated by operation of law for failure to pay the annual rental on or before January 1, 1979.

Appellant's rental check was dated January 3, 1979, the envelope was postmarked January 4, 1979, and was received by the State Office January 8, 1979. On January 10, 1979, BLM sent appellants an Oil and Gas Lease Termination Notice. Kordosky's petition for reinstatement was received on January 22, 1979. It alleged that he wrote the rent check on December 25, 1978, and believed he had mailed it the following day with a stack of bills. He enclosed copies of other checks he wrote at that time. On January 3, 1979, he discovered the envelope containing the check had slipped between the passenger seat and the door of his car and had not been mailed as planned. He wrote another check that night and mailed it the following day. He also stated that he did not send the check by certified mail because his wife underwent surgery on December 18, 1978, and was instructed by her doctor not to drive for 5 to 6 weeks, and because he had been working long hours and was unable to get to a Post Office.

BLM denied reinstatement because the payment was not mailed timely, and because it found the facts alleged by appellant did not justify late payment. The decision stated that appellant's wife's illness and his work did not prevent him from mailing payments to other creditors, and questioned whether appellant had actually written the first check.

In the statement of reasons for appeal appellant vigorously reasserts that he did write a check to be mailed December 26, 1978, and was not guilty of forgetfulness, simple inadvertence, 1/ or ignorance of the regulations. He states his belief that "reasonable diligence" must take intent and honest effort into account.

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1/ Appellant states that his action "may possibly border on complex inadvertence."

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law, except under limited circumstances not applicable here. 30 U.S.C. § 188(b) (1976). A lease may be reinstated if the failure to pay the rental timely "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1976).

[2] In order for the failure to pay rental timely to be justifiable, the failure must be caused by factors outside the lessee's control, which were the proximate cause of the failure. Emma Pace, 35 IBLA 143 (1978); Richard C. Corbyn, 32 IBLA 296 (1977); Adolph F. Muratori, 31 IBLA 39 (1977); Louis Samuel, 8 IBLA 268 (1972). Reasonable diligence normally requires sending the payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-2(c)(2).

Payment was due at the BLM State Office on January 1, 1979. Appellant's check was not mailed until at least January 4, 1979. Generally, when the rental payment is not mailed before it is due, there can be no basis for reinstating an oil and gas lease because of reasonable diligence. Albert R. Fairfield, 34 IBLA 133 (1978); Dolores M. Heggie, 28 IBLA 222 (1976).

Under 43 CFR 3108.2-1(c)(2) the burden of showing that the failure to pay the rental when due was justifiable is on the lessee. Appellant has failed to meet this burden. The fact that he wrote a check and meant to mail it by December 26, 1978, refutes any assertion that his wife's surgery and his own long hours were the proximate cause of his failure to mail the check. See Albert R. Fairfield, *supra*; Lucyann W. Cameron, 29 IBLA 141 (1977); Arthur J. Jakobiak, 25 IBLA 147 (1976). Appellant's failure to mail the check was caused by his own carelessness or inadvertence in not making sure he placed the envelope in the mailbox. Carelessness or inadvertence have not been considered sufficient excuses to justify reinstatement. Apostolos Paliombeis, 30 IBLA 153 (1977); Phillips Petroleum Co., 29 IBLA 114 (1977); Lula Mai Martin, 27 IBLA 360 (1976); Frank H. Crosby, 25 IBLA 60 (1976). Therefore, we must conclude that the BLM State Office properly denied appellant's petition for reinstatement and that the lease terminated on January 1, 1979.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson  
Administrative Judge

We concur:

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Newton Frishberg  
Chief Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge

